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I

IN THE

Supreme Court of The United States

OF AMERICA

NUMBER .....

ILLA ROUTH ALLEY SCHURINK

Petitioner

vs.

UNITED STATES OF AMERICA, and
GERTRUDE RHODES ALLEY and
BLUFORD ALLEY

Respondents

PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION AND BRIEF FOR CERTIORARI

J. EDWARD THORNTON
Merchants National Bank Building
Mobile, Alabama

VINCENT F. KILBORN
First National Bank Building
Mobile, Alabama

For Petitioner

PETITION

Illa Routh Alley Schurink prays that a writ of certiorari issue to review the judgment entered in this case November 18, 1949, by the United States Circuit Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The District Court did not write an opinion. The opinion of the Circuit Court of Appeals is reported in 177 Fed. (2d) 809.

JURISDICTION

The judgment below was entered November 18, 1949. The jurisdiction of this Court is invoked under Section 1254 of Title 28, United States Code.

QUESTIONS PRESENTED

1. Does Section 802 (g) of Title 38, U.S.C. require that a wife, designated as beneficiary of National Service Life Insurance, remain the wife of the insured until maturity of the policy or does a divorce meanwhile preclude recovery?

2. Even if an intervening divorce bars recovery, yet does an Alabama divorce, not rendered more than sixty days before maturity of the policy, actually dissolve the marriage or is it interlocutory so that the parties are yet husband and wife for sixty days from rendition of the decree?

STATUTES INVOLVED

The judgment below involves construction of the National Service Life Insurance Act of 1940 as amended prior to August

1, 1946, (Title 38, U.S.C., Sections 801 to 819) and particularly Section 802 (g) of Title 38 U.S.C. It likewise involves construction of Section 38 of Title 34, Code of Alabama of 1940.

STATEMENT

The facts are fully and correctly set forth in the opinion of the Circuit Court of Appeals (177 Fed. 2nd 809). Petitioner sued in the District Court to recover in all $10,000.00 of National Life Insurance on the life of Joseph Bluford Alley, in force at his death. Plaintiff claimed the insurance for the following facts set forth in the amended claim, all chronologically as follows:

1. Plantiff and Joseph Bluford Alley were lawfully married to one another.

2. Alley was inducted into the armed services. By two policies ($10,000.00 in all) of National Service Life Insurance Alley named Plaintiff, his wife, as designated beneficiary to receive proceeds of the insurance in the event of his death.

3. July 19, 1945, Plaintiff, a resident of Alabama, was granted a divorce by the Alabama Courts. The decree, followed the mandate of Title 34, Section 38, Code of Alabama of 1940, providing "neither party shall again marry except to one another, until 60 days after decree rendered * * * ." Alley made no change of beneficiaries.

4. August 9, 1945, while the policies were in full force, Alley died in the United States from non-combat causes.

5. Plaintiff made claim to the proceeds of the policies and her claim was denied.

6. Within the time prescribed by law (38 U.S.C., Section 445) plaintiff sued.

The United States, and Gertrude Rhodes Alley and Bluford Alley (mother and father of insured and contingent beneficiaries of the insurance) moved to dismiss the complaint for failure of plaintiff to show herself the "wife" of the insured at maturity of the policies and hence, under the facts failing to state a claim upon which relief could be granted.

The motion was granted by the District Court and the complaint dismissed. Appeal followed. Judgment in the Court of Appeals affirmed the lower court and held the complaint was properly dismissed.

SPECIFICATIONS OF ERRORS TO BE URGED

1. The Court below erred in holding the complaint was properly dismissed.

REASONS FOR GRANTING THE WRIT

The Circuit Court of Appeals in this case has decided an important question of federal law which has not been, but should be, settled by this Court. In addition, it has decided an important question of local law of Alabama in a way probably in conflict with applicable Alabama statutes and decisions.

SUPPORTING AUTHORITIES AND ARGUMENT

Title 34, Section 38, Code of Alabama of 1940 requires that all divorce decrees rendered in that State prohibit remarriage except to one another, for sixty days (the time al-

lowed for perfecting appeals) or if appeal to be taken, pending the appeal.

The Supreme Court of Alabama has clearly held that the effect of this statute and the decrees rendered in compliance with it, is to render the "entire" divorce "inoperative" (Vance vs. State, 210 Alabama 9, 97 So. 230.) and "not in effect." (Brand vs. State, *242 Ala. 15, 6 So. 2d 446* [revising 6 So. 2d 442, redecided 6 So. 2d 444, affirmed 6 So. 2d 450]). In the *Brand* case, on rehearing, the Court repeated that the decree of divorce ad interim was "not operative and in full force as a decree of divorce." So clearly has the Supreme Court of Alabama held the decree is not in effect for sixty days that in both cited cases it has affirmed bigamy convictions for remarriage within sixty days from decree rendered both within (Vance case) and without (Brand case) the State of Alabama. Bigamy in Alabama is having two spouses at the same time.

Notwithstanding the unequivocal pronouncements of Alabama courts construing their own statute, the Court of Appeals holds in its decision here that the Alabama statute, as construed by its courts, merely prohibits remarriage for sixty days and does not suspend the dissolution of the marriage itself.

Petitioner feels this clearly conflicts with local laws of Alabama as construed by its highest tribunal. If the Court of Appeals decision stands many serious problems of property law, and legal relations as clearly fixed by Alabama law will be raised. Quite obviously, if Alabama holds the decree interlocutory for sixty days there is no divorce. And inheritance, dower, remarriage in other states within that period, are determined in the light of that holding. All to be upset and great

confusion and conflict generated by the Circuit Court of Appeals holding final the otherwise interlocutory order of the Alabama Courts.

The serious local effects aside, the Court's interpretation of the meaning of Section 802(g) of 38 U.S.C. is far reaching.

Over the entire country there are doubtless thousands of cases where a designated wife in a National Service Life policy, either divorced, or was divorced by, a serviceman. The reason and grounds for those divorces are legion. Yet quite often the serviceman may have desired his former spouse should yet receive his insurance. The Circuit Court of Appeals here is the first court we know of to pass exactly upon this question.

It holds that divorce bars recovery of National Service Life Insurance by a designated wife, notwithstanding the insured made no changes in the beneficiary.

The decision conflicts with ordinary rules of law that the test of an "insurable" interest is the status at the time of issuance of a policy of insurance and not at the time of maturity.

It conflicts clearly with the express wording of Section 802 (i) of Title 38, U.S.C., that "the right of any beneficiary to payment of any installments (of insurance) shall be conditioned upon his or her being *alive to receive* such payments." It substitutes a "court-made" test for "alive to receive" and makes the test of right to the insurance "remaining the wife" instead.

The decision does violence to the whole scheme of National Service Life Insurance as expressed in Sections 802

(g), (h), (i), and (j) of Title 38 U.S.C., all based upon "survivorship" rather than "Status at death" in determining the rights of an *expressly designated* beneficiary, lawfully designated and standing in the relations to the insured set forth in Section 802 (9) of the National Service Life Act, *at the time of issuance of the policy.*

The rights of countless possible recipients of any National Service Life policy which matured prior to August 1, 1946, (when amendments removed any question as to policies maturing after that date) are substantially affected by this decision. The importance of the question to the Government as well as to the petitioner, and thousands of beneficiaries, is manifest.

No court, to our knowledge, has directly passed upon the question here presented. Several Circuits have ruled that litigants before them could not recover because, while *designated*, they were not in the status of "wife" at the time of issuance and intervening maturity of the policy and hence could not recover.

Leverly vs U.S., 162 Fed 2d 79

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McClendon vs U.S., 163 Fed 2d 895

Strauss vs U.S., 160 Fed 2d 1017,
Cert. Den., 67 S. Ct. 1741, 331 U.S. 850, 91 L. Ed.1859.

Castor vs U.S., 174 Fed 2d 481

Gehm vs U.S., 83 Fed. Supp. 1003.

CONCLUSION

For the conflict with local Alabama decisions and the great importance of the question presented to countless recipients or potential recipients of matured National Service Life Insurance policies, the petition for certiorari should be granted.

Respectfully submitted,

J. Edward Thornton
Merchants National Bank Building
Mobile, Alabama,

For Petitioner.

Vincent F. Kilborn
First National Bank Building
Mobile, Alabama

APPENDIX

Title 34 Section 38, Code of Alabama 1940:

Right of parties to remarry after divorce. - - -

When a decree has been rendered granting a divorce in this state, the court shall decree that neither party shall again marry except to each other until sixty days after decree rendered, and that if an appeal is taken within sixty days, neither party shall again marry except to each other during the pendency of said appeal.

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I

IN THE

Supreme Court of The United States

OF AMERICA

No. .....

ILLA ROUTH ALLEY SCHURINK
Petitioner

vs.

UNITED STATES OF AMERICA, and
GERTRUDE RHODES ALLEY and
BLUFORD ALLEY
Respondents

PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

S. P. GAILLARD, JR.
First National Bank Building
Mobile, Alabama

VERNOL R. JANSEN
205 Title Insurance Building
Mobile, Alabama

For Respondents
Gertrude Rhodes Alley and
Bluford Alley

STATEMENT OF THE CASE

The application by Plaintiff (petitioner) seeks to review a decision in this case by the District Court of the Southern Division of the Southern District of the State of Alabama, affirmed on appeal, with an opinion by the Circuit Court of Appeals for the Fifth Circuit. The action arises under the National Service Life Insurance Act of 1940 as amended to August 9, 1945.

PLEADINGS

The petitioner, Illa Routh Alley Schurink filed suit against the United States of America on May 12, 1948, seeking the proceeds of two policies of Five Thousand ($5,000.00) dollars each, issued under the National Service Life Insurance Act of 1940 on the life of Joseph Bluford Alley, deceased. The United States answered and interpleaded Gertrude Rhodes Alley and Bluford Alley, the mother and father of the deceased. The parents answered claiming the proceeds of the insurance and with the United States of America, filed a motion to dismiss the complaint assigning among other grounds, the failure of the petitioner to allege that she was the widow of the insured. In the District Court and in the Circuit Court of Appeals, the petitioner has not objected to the procedure by which the question is raised but admitted in both courts the question was properly raised and is as here presented by petitioner, "must the plaintiff show herself to be the widow of the insured to recover on these policies?"

The District Court granted the motion and the petitioner declining to amend, the complaint was dismissed.

FACTS

The record has been abbreviated by stipulation of counsel (R. 2). As substantially set out by the petitioner, the plaintiff and the deceased insured were married to each other prior to his entry into the United States Navy. Two policies of insurance were issued under the National Service Life Insurance Act of 1940 with the petitioner as the designated beneficiary and the parents as contingent beneficiaries. There was no child born of this marriage and no change of beneficiary was ever made. In February, 1945, the petitioner began a proceeding against Joseph Bluford Alley for a divorce in the Equity Division of the Circuit Court of Mobile County, Alabama. On July 19, 1945, a decree was rendered by that Court dissolving and annulling the bonds of matrimony but containing a provision as required by the laws of Alabama that neither party should remarry, except to each other, within sixty days after the rendition of the decree.

The insured died on August 9, 1945, with the policies of insurance in full force and effect on the date of his death.

ERRORS URGED BY PETITIONER

The petitioner on appeal to the Circuit Court of Appeals, urged error by the District Court in deciding, (1) that the petitioner must allege and prove the status of widow at the time of the death of the insured to recover under these policies and, (2) that a divorce a vinculo in the Courts of Alabama terminates the relationship of marriage. The petitioner now urges error in the affirmance by the Circuit Court of Appeals.

BASIS FOR APPLICATION FOR THE WRIT OF CERTIORARI

These respondents take issue with the petitioner on the reasons assigned for making the application. These respondents deny that there is an important question of Federal law which should be settled and deny that "countless possible recipients of National Service Life Insurance" will be affected by this decision. These respondents most strenuously deny the claim that the decision of the Circuit Court of Appeals is in conflict with Alabama Supreme Court decisions and Alabama Statutes.

AUTHORITIES AND ARGUMENT

It has been the contention of the United States of America and these respondents, throughout this litigation, that the words, "the insurance shall be payable only to a widow, widower, child, * * * of the insured" mean exactly what they say in Subsection (g) of Section 802, Title 38 of United States Code Annotated. On two occasions the Congress of the United States has provided insurance to cover men in the Armed Services in time of war. In each of these instances the Congress has taken into consideration facts which this Court will judicially know. Many young, immature men were brought into the Armed Services. They were often so situated that the execution and mailing of forms or other formal procedure was difficult if not impossible. These young men became the prey of camp followers and designing people. The Congress determined that insurance could be collected only by those within a limited relationship. During World War I and during World War II the Acts of Congress rigidly required a legal status as a widow at the time of the death of the insured.

Both Acts were amended after the men returned to a civilian status. Both amendments permitted the form of insurance to be changed and permitted the designation of beneficiaries outside of the relationship originally named. The World War I Act was amended by the Act of March 4, 1925, 43 Stat. 1302. The World War II Act was amended by Section 4 of the Insurance Act of 1946 approved August 1, 1946, 60 Stat. 781.

When the Congress adopted the National Service Life Insurance Act of 1940, 54 Stat. 1008, they had before them the history and interpretation of the provisions of the War Risk Insurance Act of World War I. They used the plain and exact language, "the insurance shall be payable only to a widow." The words, "payable" and "widow" do not refer to the status at the time the beneficiary is designated. These words refer to the date when the proceeds of the insurance policies shall be due someone. On the date of death the insurance is payable and on the date of death the insured could have a widow but not before.

Petitioner claims this interpretation "does violence to the whole scheme of National Service Life Insurance" (Brief page 6), but these respondents assert that it would torture this language to twist the meaning of this provision to relate to a status at the time of the issuance of the policies.

In sub-section (i) of this Act the Congress positively declares that no person shall have a vested right in this insurance and the consent of the beneficiary is not required for a change by the insured.

No court has construed this provision but the cases cited

by petitioner have considered related questions, as have the following cases:

Rittgers vs. United States 154 Fed. (2nd.) page 768;
Wood vs. United States 74 Fed. Supp. 732;
Horsman vs. United States 68 Fed. Supp. 522;
Brown vs. United States 72 Fed. Supp. 153;
Branch vs. United States 83 Fed. Supp. 641;
United States vs. Layton 68 Fed. Supp. 247.

The petitioner supports the proposition that a divorce decree in Alabama is actually interlocutory for a period of sixty days by citing decisions in criminal cases where one or both parties remarried within sixty days. True, a divorce decree may be amended or set aside by the Court within thirty days, just as any other decree in Equity may be so treated, Rule 65, Title 7, Code of Alabama of 1940. The decree could have been annulled or vacated just as any other decree could be. Hooke vs. Hooke 247 Ala. 450 25 So. (2nd) page 33.

The petitioner did none of these and the decree is not subject to collateral attack.

The cases cited to support the theory that the decree is interlocutory are: Vance vs. Vance 210 Ala. 9, 97 So. 230; Brand vs. State 242 Ala. 15, 6 So. (2nd) 446.

Petitioner does not cite Barfield vs. Barfield 139 Ala. 290, 35 So. 884; Boyles vs Wallace 208 Ala. 213, 93 So. 908 and Smith vs. Goldsmith 223 Ala. 155, 134 So. 651. These cases also dealt with the prohibition against marriage. Neither does the petitioner mention that in the Brand case there was no Final

Decree in existence at the time of trial, for that, the Court granting the decree had set it aside while still in the breast of the court. In the Vance case, as a part of the opinion, when the court set out the facts it said, "on December 2, 1922, he obtained a divorce from her by decree of the Circuit Court of Jefferson County, in Equity, which decree dissolved their former marriage. This was a court of competent jurisdiction to render such a decree." The court then held that the copy of this decree was properly excluded as evidence in the case for the decree did not justify the defendant in marrying the same day the decree was signed.

Other decisions of the Supreme Court of Alabama are completely ignored. In the case of Jones vs. Jones 31 So. (2nd) page 314, decided June 30, 1947, that court said, "it has long since been determined here that a decree of divorce a vinculo puts an end to the relationship of marriage as effectually as would result from the death of either party, and as a consequence, all duties and obligations necessarily dependent upon the continuance of that relationship immediately cease."

Other decisions of the highest court in Alabama enunciating this same principal are:

Alabama Pension Commission, et als, vs. Morris 242 Ala. 110, 4 So. (2nd) 896;

Torme vs. Torme 251 Ala. 521, 38 So. (2nd) 497.

The National Service Life Insurance Act was amended August, 1946, and claims arising prior to that time must have been acted upon before this time. No authority is cited to support the statement that countless possible recipients of such insurance are affected by this decision. There is nothing to indi-

cate that the District Courts have their dockets crowded with claims involving this question. Certainly, the fact that this is the first Circuit Court of Appeals decision involving this question would indicate that the number of claims depending on a decision of this question are small indeed.

The respondents, parents of the deceased serviceman, respectfully submit that the petition should be denied.

Respectfully,

S. P. GAILLARD, JR.
1st National Bank Building
Mobile, Alabama

VERNOL R. JANSEN
205 Title Insurance Building
Mobile, Alabama

For Respondents

Gertrude Rhodes Alley and
Bluford Alley

March 10, 1950.

APPENDIX

RULE 65

No questioning of decree after thirty days. Unless the jurisdiction of the court is invoked by a bill of review or by a bill in the nature of a bill of review, the court cannot alter a final decree other than by correcting clerical errors therein, after the lapse of thirty days from the date of its rendition, except where an application for rehearing has been duly filed and has not been ruled upon.

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 611

ILLA ROUTH ALLEY SCHURINK, PETITIONER

v.

UNITED STATES OF AMERICA, GERTRUDE RHODES ALLEY AND BLUFORD ALLEY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The United States District Court for the Southern District of Alabama rendered no opinion. The opinion of the Court of Appeals for the Fifth Circuit (R. 12) is reported at 177 Fed. 2d 809.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on November 18, 1949 (R. 15). The petition for a writ of

certiorari was filed on February 15, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether 38 U. S. C. 802 (g), prior to the amendment of August 1, 1946, 60 Stat. 781, required the named beneficiary of a National Service Life Insurance policy, who claims as a widow, to be in the status of the wife of the insured at the time of his death rather than only at the time the policy was issued.

2. Whether petitioner's Alabama divorce decree so severed her marital relationship, during the period of 60 days after the decree within which remarriage was prohibited, as to exclude her from the status of a "widow", within the terms of 38 U. S. C. 802 (g), during that period.

STATUTES INVOLVED

The pertinent provisions of the National Service Life Insurance Act of 1940 (Part I, Title VI of the Second Revenue Act of 1940, c. 757, 54 Stat. 974, 1008 *et seq.*, 38 U. S. C. 801-819), prior to and after the amendment of August 1, 1946 (the Insurance Act of 1946, § 4, 60 Stat. 781), and of Ala. Code, Tit. 34 (1940) are set forth in the Appendix, *infra*, pp. 9-10.

STATEMENT

The decedent, Joseph Bluford Alley, was issued two National Service Life Insurance policies while he was in the armed service of the United States

(R. 5-6). Policy No. N-7,714,782 was issued, effective January 1, 1943, in the amount of $5,000 with Illa Routh Alley, the petitioner, designated as principal beneficiary and named as wife (R. 5-6). Policy No. N-5,519,790 was issued, effective February 11, 1943, in the sum of $5,000 with Illa Ruth Alley (also known as Illa Routh Alley) designated as principal beneficiary and named as wife, and Gertrude Rhodes Alley designated as contingent beneficiary and named as mother (R. 6).

Petitioner was granted a decree of divorce from the insured on July 19, 1945, by the Circuit Court of Mobile County, Alabama (R. 6). This decree permitted remarriage by either party but not before sixty days had elapsed after rendition of the decree (R. 7). On August 9, 1945, before the expiration of the sixty day period, the insured died (R. 6).

Petitioner later filed a claim with the Veterans Administration for the proceeds of the National Service Life Insurance policies, as did the intervenors, the parents of the insured; petitioner's claim was denied and the proceeds awarded to the intervenors (R. 7).[1] Because of the denial of the claim petitioner brought suit against the United States for the proceeds of the two policies (R. 2). On motion of the Government and the intervenors (R. 3), the amended complaint was dismissed (R.

[1] The Veterans Administration has advised us that as of August 13, 1948, Gertrude Rhodes Alley, as mother of the insured, has been paid $1,243.45 and Bluford Alley, as father of the insured, has been paid $449.75.

9-10). The judgment of dismissal was affirmed (R. 15) by the Court of Appeals because (1) 38 U. S. C. 802 (g) (prior to the amendment of August 1, 1946) required petitioner to show herself to be the widow of the insured at the time of his death (R. 13), and (2) petitioner was not the "widow" of the insured, under Alabama law, at the time of his death (R. 14).

ARGUMENT

The factual situation presented here is unique and does not call for review by this Court. Ordinarily, in such circumstances the Government does not concern itself with disputes between parties for proceeds of National Service Life Insurance policies and assumes the position of a stakeholder only. See *e.g.*, Memorandum for the United States in *Dorothy May Arnold Davis* v. *Gretchen A. Prose and United States of America*, No. 612, this Term. However, here payments have been made to the intervenors by the Veterans Administration, and the Government actively participated in the controversy in both courts below.[2] Accordingly, we here take the position that the petition should be denied.

1. 38 U. S. C. 802 (g) (prior to the amendment of August 1, 1946, which added the proviso of the present statute, *infra*, p. 9) required that a

[2] Even if it be determined in this action that payments by the Veterans Administration, *supra*, p. 3, should have been made to petitioner rather than to the intervenors, we do not concede that the Government is liable to petitioner for such payments. See 38 U. S. C. 802 (l).

beneficiary of a National Service Life Insurance policy be within a class of permitted beneficiaries at the time of the death of the insured. *Infra,* p. 9. If, as contended by petitioner (Pet. 7), a beneficiary merely need show her former status as wife of the insured at the time the policy was issued in order to recover the proceeds, the use of the term "widow" is singularly inept. That term, obviously, can refer only to a beneficiary in the status of a wife at the time of death of the insured. Further, since Section 802 (g) refers to "insurance" that is "payable", it manifestly refers to the relationship of the beneficiaries to the insured at the time of death when the policy is due and "payable."

Other courts which have passed on this question have also had no difficulty in determining that to qualify as a widow under Section 802 (g) the beneficiary must have been the wife of the insured at the time of death. *Castor* v. *United States,* 174 F. 2d 481, 482 (C. A. 8), certiorari denied, 338 U. S. 836 (the petition did not present this issue); *United States* v. *Snyder,* 177 F. 2d 44, 46 (C.A. D.C.); *Gehm* v. *United States,* 83 F. Supp. 1003, 1005 (S.D. N.Y.); *United States* v. *Layton,* 68 F. Supp. 247, 249 (S.D. Fla.); *Branch* v. *United States,* 83 F. Supp. 641 (W.D. Okla.); *Cf. Cummings* v. *United States,* 34 F. 2d 284, 286 (D. Minn.). Therefore, since petitioner was not a beneficiary within a permitted class at the time of the death of the insured, payments were properly made to Gertrude Rhodes

Alley as a contingent beneficiary under the provisions of policy No. N-5,519,790 and to both intervenors under policy No. N-7,714,782. 38 U.S.C. 802 (i).

Further, Congress has since removed the restriction as to permissible beneficiaries of National Service Life Insurance and the question is no longer one of any importance. Insurance Act of 1946, Sec. 4, 60 Stat. 781, 38 U. S. C. 802 (g). *Infra,* p. 9.[3]

2. The status of the widow of a serviceman under a National Service Life Insurance policy is determined by state law, as the court below recognized (R. 14-15). *Brown* v. *United States,* 164 F. 2d 490 (C. A. 3), certiorari denied, 333 U. S. 873; *United States* v. *Snyder,* 177 F. 2d 44 (C. A. D. C.); *United States* v. *Layton,* 68 F. Supp. 247 (S.D. Fla.). The divorce decree in this action was granted under the authority of Ala. Code, Tit. 34, § 22 (1940), and was an absolute divorce *a vincula matrimonii.* In Alabama, after a decree of divorce the party against whom the divorce

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[3] See S. Rept. 1705, 79th Cong., 2d Sess., p. 4:

Section 4 of the committee amendment amends subsection 602 (g) of the National Service Life Insurance Act of 1940, as amended, by adding a proviso thereto making the provisions of the subsection as to the restricted permitted class of beneficiaries inapplicable to any national service life insurance policy maturing on or after the date of enactment of the bill. * * * any person, firm, corporation, or legal entity may be designated as beneficiary of a national service life insurance policy which matures after the date of enactment of the bill.

decree was given is permitted to remarry only if the decree so states, or if leave is given by a later order. Ala. Code, Tit. 34, § 23 (1940). But in any event, remarriage of either party except to each other is not permitted within a sixty day period from the date of rendition of the decree. Ala. Code, Tit. 34, § 38 (1940). Where property rights are concerned, the divorce decree severs the marital relationship as of the date of issuance, so that thereafter a former spouse has no property rights dependent on the marital relationship in the estate of the other spouse. *Ex parte Jones,* 249 Ala. 386, 388; *Atkinson* v. *Atkinson,* 233 Ala. 125, 126; *Downey* v. *Downey,* 98 Ala. 373; *Torme* v. *Torme,* 251 Ala. 521.

This is so even though the prohibition against remarriage suspends the effect of the divorce decree and renders it "inoperative" (*Vance* v. *State,* 210 Ala. 9, 10; *Brand* v. *State,* 242 Ala. 15), insofar as it relates to a prosecution for bigamy. This distinction between the effective date of a divorce decree as affecting property rights and as affecting a prosecution for bigamy is a holding common to other state courts. *Atkeson* v. *Sovereign Camp, W.O.W.,* 90 Okla. 154; *Durland* v. *Durland,* 67 Kan. 734; *Heflinger* v. *Heflinger,* 136 Va. 289; *Rogers* v. *Hollister,* 156 Wis. 517; cf. *Steele* v. *Steele,* 65 F. Supp. 329 (D.D.C.). It certainly presents no question calling for review by this Court, especially where the interpretation of Alabama law is by a Court of Appeals with jurisdiction over that state,

speaking through a judge from Alabama. *Propper* v. *Clark*, 337 U. S. 472, 486-487; *Estate of Spiegel* v. *Commissioner*, 335 U. S. 701, 707-708; *MacGregor* v. *State Mutual Co.*, 315 U. S. 280, 281.

CONCLUSION

The decision below is correct and accords with the applicable state law. There is no reason for further review. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.
H. G. MORISON,
Assistant Attorney General.
PAUL A. SWEENEY,
DAVID B. BLISS,
Attorneys.

MARCH, 1950.

APPENDIX

1. National Service Life Insurance Act of 1940, 54 Stat. 1008, § 602 (g), as amended prior to August 1, 1946, 38 U. S. C. 802 (g) (1942):

> (g) The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent, brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided.

2. Insurance Act of 1946, approved August 1, 1946, 60 Stat. 781, § 4, 38 U. S. C. 802 (g) (1949):

> * * * *Provided,* That the provisions of this subsection as to the restricted permitted class of beneficiaries shall not apply to any national service life-insurance policy maturing on or after the date of enactment of the Insurance Act of 1946 [August 1, 1946].

3. Alabama Code, Tit. 34 (1940):

> § 22: *To wife in case of cruelty or nonsupport of husband.*—In favor of the wife when the husband has committed actual violence on her person, attended with danger to life or health, or when from his conduct there is reasonable apprehension of such violence, or when the

wife has lived, or shall have lived separate and apart from the bed and board of the husband for two years and without support from him for two years next preceding the filing of the bill; and she has bona fide resided in this state during said period.

§ 38: *Right of parties to remarry after divorce* —When a decree has been rendered granting a divorce in this state, the court shall decree that neither party shall again marry except to each other until sixty days after decree rendered, and that if an appeal is taken within sixty days, neither party shall again marry except to each other during the pendency of said appeal.

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